



Pennichuck Brook Watershed Council
93 Taylor Street
Nashua, NH 03060

603 886-5555 Voice
603 880-1947 Fax
afuller@pennichuck.org

RECEIVED

JAN 08 2004

Mr. Michael Sclafani
Water Council
New Hampshire of Environmental Services
6 Hazen Road
Concord, NH 03302
603-271-3503 Phone
603 271-8805 Fax

Cover Letter -January 8, 2004

Re: Motion for rehearing - Docket No. 03-19 WC

Dear Mr. Sclafani:

The Pennichuck Brook Watershed Council ("PBWC") is filing the attached motion for rehearing on this day January 8, 2004 per the attached filing. The filing includes information specified in Env-C 203.29(b). Copies of this motion for rehearing shall also be sent or delivered to all other parties of record.

As evidence of this and prior filings, the PBWC is committed to having our Petition of Appeal ("Appeal") heard. Our Appeal was received by the Department of Environmental Services and stamped so on December 5th, 2003. The date stamped front page of the Appeal is attached to this cover letter. Per the Response to Motion for Reconsideration, PBWC had thirty (30) days from the date of the decision (November 5, 2003) to appeal to the Water Council, DES'S affirmation of site Specific Permit #WPS-6467.

The subsequent hand written commentary to "not file" on our Appeal was added by you based on your assertion that the "Petition needs correction". As declared previously "we believe the Petition was correct as filed." The procedural deficiencies you recommended were change by phone conversation on December 5th. We also requested to fax the typographical corrections or drive a corrected cover page with the correction to DES in Concord on December 5th. Both options were reject as not allowed and not necessary respectively. The procedural deficiencies were corrected the very next business day. Thus the re-submittal dated December 8th 2003. We respectfully call for the Water Council to re-evaluate their conclusion that the PBWC did not submit within the 30-day filing requirement.

The Water Councils Decision & Order to SUMMARILY DISMISS the PBWC Notice of Appeal based on DENIAL of the Motion to Waive Administrative Rules is unjustified based on our labors to obey the rules.



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The PBWC has been granted standing in "DES Site Specific Permit #WPS-6467. Our Appeal contains a substantive basis upon which the Water Council could make a finding in favor of PBWC assertions. A denial to be heard would invalidate New Hampshire's legislative intent "to ensure long-term viability of public drinking water systems..."

We are not asking for more time to amend or supplement our Appeal.

Sincerely

Allan Fuller, Ph.D., Chairman

Date: January 8, 2004

Cc: Michael P. Nolin, Commissioner, DES
Harry T. Stewart, P.E., Director
Gretchen Rule, DES Legal Unit
Town of Amherst
Rais/Crest LLC, c/o Prolman Realty



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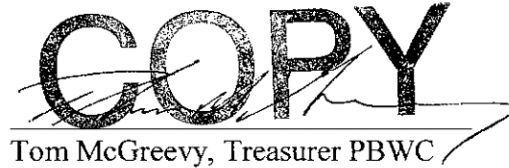
CERTIFICATE OF SERVICE

I hereby certify that 20 copies of the Motion for Rehearing to the Water Council attached were delivered by hand to NH-DES this day attention Michael Sclafani, Water Council, New Hampshire Department of Environmental Services, and single copies attention Michael P. Nolin, Commissioner, New Hampshire Department of Environmental Services, Harry T. Stewart, Director, Water Division, New Hampshire Department of Environmental Services, and single copy was sent, *via* first class, United States mail to the Town of Amherst, and Rais/Crest LLC c/o Prolman Realty.

Attachments:

1. Cover letter
2. Motion for Rehearing
3. Front page of original Appeal
4. DES Envelope with November 10, 2003 postmark

Jan 8, 2004
Date, January 08, 2004

COPY

Tom McGreevy, Treasurer PBWC

STATE OF NEW HAMPSHIRE

WATER COUNCIL

03-19 WC

DEPARTMENT OF ENVIRONMENTAL SERVICES

MOTION FOR REHEARING
PENNICHUCK BROOK WATERSHED COUNCIL

NOW COMES the Pennichuck Brook Watershed Council ("PBWC"), and submits this Motion for Rehearing signed January 8, 2004. PBWC hereby objects to the dismissal of our Notice of Appeal based on noncompliance of the 30 day filing requirement. Pursuant to Env-WC 203.29(a), this motion contains information specified in Env-WC 203.29(b).

Background

1. Delivered by hand, dated and stamped "received Dec 5 2003" Dept of Environmental Services", the Pennichuck Brook Watershed Council submitted to same, a Petition of Appeal ("Petition") to reconsider the issuance permits related to the proposed Summerfield Condominium development in Amherst, NH.
2. As stated in the Response to Motion for Reconsideration, PBWC had thirty (30) days from the date of the decision (November 5, 2003) to appeal. (Note: The decision was signed on November 5th, but the envelope [copy attached] was postmarked December 10th from Concord, thereby arriving in Nashua on Veteran's day November 11th giving the Pennichuck Brook Watershed Council less than 24 days [including Thanksgiving holidays] to respond with this appeal.)
3. Based on procedural guidance provided by the Water Councils Appeals Clerk Mr. Michael Sclafani, on December 5, 2003, the PBWC re-filed the Petition the next business day with a request to Waive Administrative Rules as requested to so.
4. The Water Councils Decision & Order to Summarily Dismiss our Petition makes no mention of the December 5, 2003 filing.

5. The supplementary hand written comment (on the Petition) dated December 5, 2003 to "not file" was presumptuous and does not represent our request.

Basis of the Aggrievement

6. Petition filed within the thirty-day requirement.

Finding and Conclusion

7. Petition date stamped received and as given on December 5, 2003.

Basis for the Objection

8. Labors to obey the rules.

New or Additional Evidence

9. Only to cure any deficiencies or errors in the original Appeal, at this time.

Relief Requested (Motion to Rehear)

10. The PBWC has been granted standing, for this reason we request to be heard. Our Petition was filed timely. The Water Council has the authority... Our concerns presented portend alteration to a public water supply system by the proposed development.

WHEREFORE, *Chapter 485 – New Hampshire Safe Drinking Water Act*. to provide a comprehensive drinking water protection program for the citizens of N.H. and that DES shall provide assistance to ... the general public. The PBWC a non-profit membership organization, respectfully requests your intervention in ensuring our presented shortcomings are adequately addressed and fully understood so that all of the mitigating factors are defensible.

Respectfully submitted,

Pennichuck Brook Watershed Council

B.

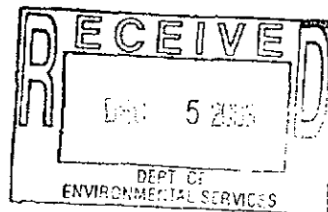

Allan Fuller, Ph.D., Chairman
93 Taylor Street
Nashua, NH 03060

Dated: January 8, 2004

Per telephone conversation with Appellant
on 12/5/03 do not file with Wetlands Council.
Petition needs correction. Appellant
will pick up petition & correct
petition & file with the Wetlands Council.
12/11/03

STATE OF NEW HAMPSHIRE

WETLANDS COUNCIL



DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU
(SEPTIC PERMITS, PUBLIC TRUST DOCTRINE, AND THE REQUEST
FOR CONSIDERATION (BELOW))

RECEIVED

DEC 08 2003

**PETITION OF APPEAL OF PENNICHUCK BROOK WATERSHED
COUNCIL**

03-19 WC

NOW COMES the Pennichuck Brook Watershed Council ("PBWC"), and
submits this Petition of Appeal of the New Hampshire Department of Environmental
Services' ("Department") signed November 5, 2003 order denying reconsideration of its
decision to grant (quoting from the NH-DES response):

"DES Site Specific Permit #WPS-6467; DES Subdivision Approval #SA2003004123;
DES Subsurface Sewage Disposal Septic System Approvals CA2003052543,
CA2003052415, CA2003052544, CA2003052428, CA2003052427, CA2003052426,
CA2003052546, CA2003052548, CA2003052374, CA2003052545, CA2003052542,
CA2003052430, CA2003052423, CA2003052424, CA2003052397, CA2003052378,
CA2003052396, CA2003052547, CA2003052429, CA2003052375, CA2003052376,
CA2003052377, CA2003052395, CA2003052740, and CA2003052741

By letter dated June 13, 2003, the Pennichuck Brook Watershed Council ("PBWC")
requested the Department of Environmental Services, Subsurface Systems Bureau
("DES") to reconsider the issuance of all septic system and other permits related to the
proposed Summerfield Condominium development in Amherst, NH ("the Project").
Based on procedural guidance provided by DES, on July 14, 2003, the PBWC filed a
Motion for Reconsideration with DES pursuant to RSA 485-A:40, I and II ("the
Motion"). The Motion requested DES to review and reconsider issuance of the above-
identified individual subsurface disposal system approvals, the above-identified
subdivision approval, and the above-identified Site Specific Permit (collectively, "the
Permits") issued for the Project. With the exception of the last two listed septic system
approvals, all permits were issued to Rais/Crest LLC, in care of Prolman Realty, 100
Elm Street, Nashua, NH 03060. Approvals CA2003052740 and CA2003052741 were
issued to TANA Properties Limited Partnership, 40 Temple Road, Nashua, NH 03060."

State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
SUBSURFACE SYSTEMS BUREAU
6 Hazen Drive PO Box 95
Concord, NH 03302-0095
8525

RETURN SERVICE REQUESTED

RETURN SERVICE
REQUESTED

NOV 1 1993
NH



ALLAN FULLER PhD
PENNICHUCK BROOK WATERSHED COUNCIL
93 TAYLOR ST
NASHUA NH 03060

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